UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of SCHERING-PLOUGH CORPORATION, a corporation, UPSHER-SMITH LABORATORIES, INC., a corporation, and AMERICAN HOME PRODUCTS CORPORATION, a corporation.	Docket No. 9297

COMPLAINT COUNSEL'S MOTION TO COMPEL RESPONDENT AMERICAN HOME PRODUCTS CORPORATION TO PRODUCE DOCUMENTS AND TESTIMONY

Pursuant to § 3.38(a) of the Federal Trade Commission's Rules of Practice, complaint counsel hereby move for an order compelling respondent American Home Products Corporation ("AHP") to:

1. Fully comply by October 3, 2001 with complaint counsel's first and second requests for production of documents and things issued to AHP; and

2. Designate and produce for deposition a document custodian no later than October 3, 2001.

The bases of this motion are set forth in the accompanying Memorandum in Support of Complaint Counsel's Motion to Compel American Home Products Corporation to Produce Documents and Testimony. The statement required by Rule 3.22(f) is attached to this motion.

Respectfully submitted,

Yaa A. Apori (202) 326-2079
Karen G. Bokat (202) 326-2912

Fax No. (202) 326-3384

Bureau of Competition
Health Care Services and Products
Federal Trade Commission
601 Pennsylvania Ave., N.W., Room 3115
Washington, D.C. 20580

Counsel Supporting the Complaint

Dated: September 17, 2001

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of SCHERING-PLOUGH CORPORATION, a corporation, UPSHER-SMITH LABORATORIES, INC., a corporation, and AMERICAN HOME PRODUCTS CORPORATION, a corporation.	Docket No. 9297

TO: The Honorable D. Michael Chappell
Administrative Law Judge

MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL'S MOTION TO COMPEL AMERICAN HOME PRODUCTS CORPORATION TO PRODUCE DOCUMENTS AND TESTIMONY

Pursuant to Rule 3.38(a) of the Commission's Rules of Practice for Adjudicative Proceedings, complaint counsel respectfully move to compel American Home Products Corporation ("AHP") to respond in full to complaint counsel's first and second requests for the production of documents and things issued to American Home Products Corporation. Complaint counsel also move to compel testimony in response to the Rule 3.33(c) deposition of the person designated by AHP as document custodian. These discovery requests call for information and documents that are essential to complaint counsel's preparation for trial.

I. INTRODUCTION

In part, the allegations in the complaint in this matter arose from a review of respondent AHP's documents and from information obtained in investigational hearings of certain AHP employees during the pre-complaint investigation of the respondents. Since that time, complaint counsel have become aware of aspects of the challenged transactions that require additional inquiry. To that end, complaint counsel have issued requests for additional documents from AHP, and have anticipated the need for depositions of various individuals to be based, in part, on the additional documents sought to be obtained by the requests. Complaint counsel's initial document request was issued on May 22, 2001, nearly four months ago. See Exhibit A. Complaint counsel's second document request, which was narrow in scope, was issued on August 3, 2001, more than six weeks ago. See Exhibit B. AHP has not fully complied with either document request, and has not even committed to a date for such compliance, despite complaint counsel's repeated efforts to expedite compliance and to obtain such a commitment. For example, AHP has provided no documents for 9 out of 31 combined specifications. Nor has AHP provided any explanation or reason for its failure to fully respond to the document requests or commit to a firm date for full compliance.

By contrast, complaint counsel received AHP's document request on June 1, 2001. Other than certain disputed categories of documents and search areas, which were subject to resolution by Your Honor, complaint counsel fully complied with AHP's document request by August 22, 2001, several weeks ago.

The notice of deposition for AHP's document custodian was sent on July 11, 2001. See Exhibit C. AHP sent a letter objecting to the deposition of the document custodian but filed no

motion with this Court to oppose complaint counsel's notice of deposition. Complaint counsel has reaffirmed the need for this deposition, but AHP has not complied with complaint counsel's requests. AHP's unjustifiedly protracted and dilatory response to complaint counsel's document requests has prejudiced complaint counsel's efforts to conduct proper discovery by means of deposition, has impeded complaint counsel's ability to collect evidence in preparation for trial, and has required complaint counsel's experts to prepare their initial reports without access to information that would be included in a complete document production. Because complaint counsel are currently scheduling depositions for both numerous fact witnesses and more than twenty expert witnesses identified by respondents, it is essential that the Administrative Law Judge expeditiously issue an order requiring full and immediate compliance by AHP with these outstanding discovery requests.

Complaint counsel have contacted AHP representatives on several occasions in an effort to obtain compliance with the above-mentioned discovery requests. Nevertheless, AHP representatives have failed to complete the requested document production, have refused to commit to a firm date for full compliance with the document requests, and have refused to identify and schedule the deposition of the designated document custodian.

II. ARGUMENT: AHP's Incomplete and Dilatory Compliance with Complaint Counsel's Discovery Requests Has Unfairly Prejudiced Complaint Counsel's Pre-trial Preparation

A. Document Requests

On May 3, 2001, this Court entered a scheduling order establishing the timetable for discovery and trial in this matter. The scheduling order is premised on good faith compliance by

all parties in the discovery process. AHP's unaccountably delayed document production undermines this process. On May 22, 2001, complaint counsel issued its first document request to AHP. Complaint counsel sought to expedite the discovery process and, by a letter dated May 30, 2001, invited AHP to discuss its concerns about the Document Request. Complaint counsel met with AHP on June 25, 2001 to discuss the scope of complaint counsel's first document request to AHP, the scope of AHP's document request to complaint counsel, the anticipated date for full compliance with the document request, and issues relating to the privilege log.

Complaint counsel issued a second request for documents to AHP on August 3, 2001. Complaint counsel conferred with an AHP representative on September 10, 2001 about the expected date of compliance for the document requests issued to AHP. During that conversation, AHP counsel would not commit to a date for full compliance for either of complaint counsel's document requests. AHP's most recent letter to complaint counsel exemplifies AHP's ongoing refusal to firmly commit to a date for complete compliance with complaint counsel's discovery requests. In a September 14, 2001 letter, one of AHP's representatives writes that "AHP expects that its document production will be substantially complete by September 28." AHP's assertion of its "expectation" is quickly followed by a statement that the stated compliance date may not be met: "If this expectation changes, I will let you know promptly." See Exhibit D. Moreover, even at this late date, nearly four months after complaint counsel's initial document request, AHP does not commit to full compliance with the request, but only that production will be "substantially complete," an imprecise term the meaning of which AHP does not specify. As with the first Document Request, AHP has not complied with the second document request, has not committed to a date when all responsive documents will be produced, and has not provided a reason for the

delay in production or AHP's refusal to commit itself to a firm production date.

Over the past few months, complaint counsel and AHP have endeavored to narrow the scope of complaint counsel's document requests and have reached agreement as to most of the specifications contained therein[1]. The scope and substance of the production are not at issue here. Complaint counsel primarily seek this motion to compel the production of documents that were promised by AHP counsel. AHP has had the Document Request since May. AHP has not committed to a date of when it will fully comply with the request, nor will AHP even confirm that complaint counsel has received the substantial portion of responsive documents. Finally, AHP has not given any reason for its lagging document production. The document production from AHP is incomplete. To date, AHP has submitted thirty-seven boxes of documents, but complaint counsel has not received any documents responsive to certain specifications of either the first or second document request issued to AHP. We are rapidly nearing the close of pre-trial discovery, and AHP's incomplete document production severely hinders complaint counsel's ability to conduct meaningful discovery, including delaying important depositions of AHP employees, and otherwise prepare for trial. Therefore, complaint counsel respectfully requests that Your Honor order AHP to fully comply with complaint counsel's document requests.

B. Deposition of Document Custodian

AHP also has refused to identify and schedule a deposition date for the person designated as AHP's document custodian in response to complaint counsel's noticing such a deposition on July 11, 2001, more than two months ago. Complaint counsel have requested this deposition

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[1] Complaint counsel and AHP continue to negotiate other issues arising from the privilege log.

because of the delay in AHP's responding to complaint counsel's document request, which had been outstanding for nearly two months at the time the deposition was noticed. Complaint counsel believe that it is necessary to conduct a document custodian deposition in order to verify that all potentially relevant areas and files have been searched in AHP's response to the document production requests.

In response to complaint counsel's deposition notice for AHP's document custodian, AHP sent a letter to complaint counsel on July 19, 2001 objecting to the deposition of the document custodian. However, AHP did not file a motion to quash (either timely or otherwise),[2] nor a motion seeking a protective order to oppose complaint counsel's notice of deposition.

Complaint counsel and AHP exchanged a list of files searched for responsive documents on July 19, 2001; however, the search list did not replace the need for the document custodian deposition. When exchanging a list of files searched, AHP indicated that its list was subject to change: "Also, please note that AHP is still in the process of identifying where responsive documents are likely to be found and reserves the right to alter this list as necessary." See Exhibit E.

In view of AHP's incomplete and protracted response to complaint counsel's document requests, and its refusal to schedule the noticed deposition of its document custodian, complaint counsel requests that Your Honor order AHP to designate and produce for deposition a document custodian no later than October 3, 2001, so that complaint counsel may fully explore AHP's

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[2]Under Rule 3.34(c) of the Commission's Rules of Practice, any motion to limit or quash a subpoena had to be filed within the earlier of the following: ten days after notice was served (or the first business day thereafter), or the time for compliance with the subpoena (i.e., July 23, 2001). Thus, a timely motion would have had to be filed by July 23, 2001.

compliance with the document requests and avoid further delay in the discovery process.

III. CONCLUSION

AHP's delayed document production and refusal to schedule the deposition discussed above has hindered complaint counsel's ability to adequately prepare for trial. The respondents in this matter have named approximately twenty expert witnesses. AHP's delayed compliance with discovery has forced complaint counsel to schedule depositions of important fact witnesses during the same brief period that will be required to conduct expert witness discovery. AHP's dilatory document production has impeded complaint counsel's efforts to gather evidence, and the reports of complaint counsel's experts have had to be prepared without access to many of AHP's documents. AHP's record of limited document production, unjustified delay, and noncompliance with complaint counsel's deposition notices demonstrate that AHP is improperly delaying discovery. Without Your Honor's intervention, AHP is unlikely to fully comply with the document requests and other discovery prior to the end of the discovery period, thereby prejudicing complaint counsel's ability to complete discovery and trial preparation in a timely manner, and thus jeopardizing the ability to meet the later deadlines of the Scheduling Order. For the foregoing reasons, complaint counsel hereby move this Court to compel AHP to:

1. Comply with the outstanding document requests no later than October 3, 2001; and
2. Designate and produce for deposition a document custodian no later than October 3, 2001.

Respectfully submitted,

Yaa A. Apori (202) 326-2079
Karen G. Bokat (202) 326-2912

Fax No. (202) 326-3384

Bureau of Competition
Health Care Services and Products
Federal Trade Commission
601 Pennsylvania Ave., N.W., Room 3115
Washington, D.C. 20580
Counsel Supporting the Complaint

Dated: September 17, 2001

CERTIFICATE OF SERVICE

I, Yaa A. Apori, hereby certify that on September 17, 2001, I caused an original, two paper copies, and an electronic copy of Complaint Counsel's Motion to Compel Respondent American Home Products Corporation to Produce Documents and Testimony to be filed with the Secretary of the Federal Trade Commission, and that two paper copies and an electronic copy were served by hand upon:

Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission, Room 104
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

and one paper copy was hand delivered to each of the following:

Laura S. Shores, Esq.
Howrey Simon Arnold & White, LLP
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2402
Attorney for respondent Schering-Plough Corporation

Cathy Hoffman, Esq.
Arnold & Porter
555 Twelfth Street, NW
Washington, D.C. 20004-1206
Attorney for respondent American Home Products Corporation

Christopher M. Curran, Esq.
White & Case LLP
601 13th Street, NW
Washington, DC, 20005
Attorney for respondent Upsher-Smith Laboratories, Inc.

Yaa A. Apori
Counsel Supporting the Complaint

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of SCHERING-PLOUGH CORPORATION, a corporation, UPSHER-SMITH LABORATORIES, INC., a corporation, and AMERICAN HOME PRODUCTS CORPORATION, a corporation.	Docket No. 9297

ORDER GRANTING COMPLAINT COUNSEL'S MOTION TO COMPEL RESPONDENT AMERICAN HOME PRODUCTS CORPORATION TO PRODUCE DOCUMENTS AND TESTIMONY

Upon consideration of Complaint Counsel's Motion to Compel Respondent American Home Products Corporation to Produce Documents and Testimony, IT IS HEREBY ORDERED that Complaint Counsel's Motion to Compel is GRANTED, and it is further ORDERED that respondent American Home Products Corporation:

1. Fully comply by October 5, 2001 with Complaint Counsel's First Request for Production of Documents and Things issued to AHP; and

2. Designate and produce for deposition a document custodian no later than October 3, 2001.

Dated: _____ , 2001

_____
D. Michael Chappell
Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of SCHERING-PLOUGH CORPORATION, a corporation, UPSHER-SMITH LABORATORIES, INC., a corporation, and AMERICAN HOME PRODUCTS CORPORATION, a corporation.	Docket No. 9297

Declaration of Yaa A. Apori

Pursuant to 16 C.F.R. § 3.22(f) Yaa A. Apori declares as follows:

1. I am an attorney with the Federal Trade Commission and serve as complaint counsel In the Matter of Schering-Plough Corporation, Upsher-Smith Laboratories, Inc., and American Home Products Corporation, Docket No. 9297. I submit this declaration to represent that complaint counsel have conferred with American Home Products in an effort in good faith to resolve by agreement the issues raised in complaint counsel's Motion to Compel Respondent American Home Products Corporation to Produce Documents and Testimony. Complaint counsel and American Home Products have been unable to reach such an agreement.

2. On May 22, 2001, complaint counsel issued to American Home Products our First Request for Documents and Things. American Home Products responded to this request on June 11, 2001.

3. Philip Eisenstat, Steve Vieux, Andrew Ginsburg, Commission attorneys also serving as complaint counsel in this matter, and I participated in two "meet and confer" sessions on June 25, 2001 and July 12, 2001 with Anika Sanders Cooper and Barbara Wootton and negotiated the scope of the specifications within our first document request. I also spoke with AHP counsel on September 10, 2001 regarding the production of documents in response to complaint counsel's second document request.

4. Additionally by means of written and oral communications on July 19 and September 10, complaint counsel conferred with counsel for AHP in good faith in an effort to identify and schedule for deposition the person designated as AHP's document custodian.

5. As a result of these conversations we were able to reach agreement with respect to American Home Products' production in response to several specifications. Despite our best efforts, however, we were unable to resolve our differences relating to the date for full compliance with our document requests and the production of a document custodian for deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Yaa A. Apori

Dated: September 17, 2001

EXHIBIT A

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of SCHERING-PLOUGH CORPORATION, a corporation, UPSHER-SMITH LABORATORIES, INC., a corporation, and AMERICAN HOME PRODUCTS CORPORATION, a corporation.	Docket No. 9297

COMPLAINT COUNSEL'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS ISSUED TO AMERICAN HOME PRODUCTS CORPORATION

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.37, complaint counsel hereby requests that respondent American Home Products Corporation (hereinafter "AHP") produce all documents and other things responsive to the following request, within its possession, custody, or control, within twenty days in accordance with the Definitions and Instructions set forth below.

DEFINITIONS

A. The terms "the company" and "AHP" mean American Home Products Corporation, its domestic and foreign parents, predecessors, divisions, and wholly or partially owned subsidiaries, affiliates, partnerships, and joint ventures; and all directors, officers, employees, consultants, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by the company.

B. The term "ESI" means ESI-Lederle, a business unit of Wyeth-Ayerst Pharmaceuticals, Inc., an AHP subsidiary. The term "ESI" includes its predecessors.

C. The term "Schering" means Schering-Plough Corporation, its domestic and foreign

parents, predecessors, divisions and wholly or partially owned affiliates, partnerships, and joint ventures; and all directors, officers, employees, consultants, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by the company.

D. The term "Upsher" means Upsher-Smith Laboratories, Inc., its domestic and foreign parents, predecessors, divisions, and wholly or partially owned subsidiaries, affiliates, partnerships, and joint ventures; and all directors, officers, employees, consultants, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by the company.

E. The term "KV" means KV Pharmaceutical Company, headquartered at 1088 Metro Court, Saint Louis, MO 63043. The term "KV" includes its domestic and foreign parents, predecessors, divisions, and wholly or partially owned subsidiaries, affiliates, partnerships, and joint ventures; and all directors, officers, employees, consultants, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by the company.

F. The term "document" means all written, recorded, or graphic materials of every kind, prepared by any person, that are in the possession, custody, or control of the company. It includes all electronically-stored data accessible through computer or other information retrieval systems or devices. The term "document" includes the complete original document (or a copy thereof if the original is not available), all drafts, whether or not they resulted in a final document, and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. Documents covered by this document request include, but are not limited to, the following: letters; memoranda; reports; contracts and other agreements; studies; plans; entries in notebooks, calendars and diaries; minutes, records, and transcripts of conferences, meetings, telephone calls or other communications; published and unpublished speeches or articles; typed and handwritten notes; electronic mail; facsimiles (including the header showing the receipt date and time); tabulations; statements, ledgers, and other records of financial matters or commercial transactions; diagrams, graphs, charts, blueprints, and other drawings; technical plans and specifications; advertising and product labels; photographs, photocopies, slides, microfilm, microfiche, and other copies or reproductions; film, audio and video tapes; tape, disk, and other electronic recordings; and computer printouts.

G. The term "relating to" means, in whole or in part, addressing, analyzing, concerning,

constituting, containing, commenting on, discussing, describing, explaining, identifying, referring to, reflecting, reporting on, supporting, stating, or dealing with.

H. The term "documents sufficient to show" means documents that are necessary and sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information, these may be provided in lieu of the underlying documents.

I. The terms "each," "any," and "all" mean "each and every."

J. The terms "and" and "or" have both conjunctive and disjunctive meanings as necessary to bring within the scope of this document request anything that might otherwise be outside its scope.

K. The singular form of a noun or pronoun includes its plural form, and vice versa; and the present tense of any word includes the past tense, and vice versa.

L. The term "plan" means a proposal, recommendation or consideration, whether or not precisely formulated, finalized, authorized, or adopted.

M. The term "year" means either the calendar year, a twelve month period beginning on January 1 and ending on December 31; or, for financial records, the fiscal year, a twelve month period identified by the company.

N. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.

O. The term "agreement" means any oral or written contract, arrangement or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.

P. The term "person" includes ESI and means any natural person, corporate entity, sole proprietorship, partnership, association, governmental entity, or trust.

Q. The term "Licensing Agreement" means any agreement with any person in which one party to the agreement grants authority to another person that empowers the latter to make, use, or sell a product.

R. The term "net sales" means gross sales after deducting discounts, rebates, returns, allowances and excise taxes. Gross sales includes sales whether manufactured by the company itself or purchased from sources outside the company and resold by the

company in the same manufactured form as purchased.

S. The term "gross profit" means net sales less cost of goods sold.

T. The term "net profit" means gross profit less direct business unit expenses, including, but not limited to, national marketing and promotion costs, business research costs, clinical trial costs and supplies, samples, and processing costs.

U. The term "SKU" means stock keeping unit.

V. The terms "NDA" and "new drug application" mean an application submitted to the United States Food and Drug Administration seeking regulatory approval to market a new drug, pursuant to 21 CFR 314.50.

W. The terms "ANDA" and "abbreviated new drug application" mean an application submitted to the Food and Drug Administration seeking regulatory approval to market a generic or bioequivalent version of an approved drug, pursuant to 21 CFR 314.94.

X. The terms "discuss" and "discussing" mean in whole or in part constituting, containing, describing, or addressing the designated subject matter, regardless of the length of the treatment or detail of analysis of the subject matter, but not merely referring to the designated subject matter without elaboration. Further, these terms include any operating or financial data about the designated subject matter where data are separately set out as in a chart, listing, table, or graph.

Y. The term "Upsher Patent-Infringement Litigation" means Key Pharmaceuticals, Inc., plaintiff v. Upsher-Smith Laboratories, Inc., defendant, Civil Action No. 92-6281.

Z. The term "ESI Patent-Infringement Litigation" means Key Pharmaceuticals, Inc., plaintiff, v. ESI-Lederle, Inc., defendant, Civil Action No. 96-CV-1219.

AA. The term "AWP" means average wholesale price.

BB. The term "WAC" means wholesale acquisition cost.

CC. The term "ATP" means average transactional price, or net sales divided by units sold.

INSTRUCTIONS

1. Except for privileged material, the company will produce each responsive document in its

entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Except for privileged material, the company will not mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

2. Unless otherwise indicated, each specification in this document request covers documents dated, generated, received, or in effect on or after **January 1, 1995**. The company should supplement, amend or correct the disclosure and responses to these requests, on a continuing basis, within 20 days after it ascertains that it possesses any additional responsive information. This request shall be deemed continuing in nature.

3. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, the company may submit legible copies. However, if the coloring of any document communicates any substantive information, the company must submit the original document or a like-colored photocopy.

4. Magnetic media shall be submitted in the following forms and formats:

   a. Magnetic storage media. The FTC will accept: (1) 9-track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI; (2) 3.5-inch microcomputer floppy diskettes, high-density, double-sided, formatted for IBM compatible computers (1.44 MB capacity); (3) Iomega ZIP disks formatted for IBM compatible PCs (100 or 250 MB capacity); (4) CD-R74 CD-ROM readable disks formatted to ISO 9660 specifications (650 MB capacity); (5) Iomega DITTO mini data cartridges (2000 MB capacity). The FTC will accept 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes by pre-authorization only. In all events, files provided on 4mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs. Where data is to be transferred from a UNIX system the FTC will accept data provided on 8mm DAT created using TAR or DD.

   b. File and record structures.

      (1). Magnetically-recorded information from centralized non-microcomputer-based systems:

         (a) File structures. The FTC will accept sequential files only. All other file structures must be converted into sequential format.

         (b) Record structures. The FTC will accept fixed length records only. All data in the record is to be provided as it would appear in

printed format: *i.e.*, numbers unpacked, decimal points and signs printed.

(2). Magnetically-recorded information from microcomputers. Microcomputer-based data: word-processing documents should be in DOS-text (ASCII), WordPerfect 8 or earlier version, or Microsoft Word 2000 or earlier version format. Spreadsheets should be in Microsoft Excel 2000 (.xls) or earlier version, or Lotus-compatible (.wk1) format. Database files should be in Microsoft Access 2000 (.mdb) or earlier version, or dBase-compatible (.dbf), version 4 or earlier, format. Database or spreadsheet files also may be submitted after conversion to ASCII delimited, comma separated format, with field names as the first record, or to or fixed length fields accompanied by a record layout.. Graphic images must be in TIFF 4 format, compressed and unencrypted. Other proprietary software formats for word processing documents, spreadsheets, databases, graphics and other data files will be accepted by pre-authorization only. For microcomputer files that are too large for one disk, files may be provided in a compressed ZIP format.

c. Documentation.

(1). Data must be accompanied by the following information:

(a) full path name of the file; and

(b) the identity of the media on which on which it resides, e.g. the identity of the cd, zip disk or floppy that holds the file. In the case of complex files or directories of files, all component files that are part of a given directory must be specified with their full path names. Where necessary, the subdirectories that must be created in order to successfully read these submitted files must be provided.

(2). Files must be accompanied by the following information: (a) filename; (b) the identity of the particular storage media on which the file resides; (c) the position of the file on the media.

(3). For all sequential files, the documentation also must include:

(a) the number of records contained in the file;

(b) the record length and block size ; and

(c) the record layout, including:

i. the name of each element,
ii. the element's size in bytes, and
iii. the element's data type. The documentation should be included in the same package as the storage media, along with a printout of the first 100 records in report format.

d. Shipping. Magnetic media should be carefully packed to avoid damage, and must be shipped clearly marked: **MAGNETIC MEDIA DO NOT X-RAY.**

e. Virus Checks: Media will be scanned for viruses. Infected media will be returned for replacement.

5. The company shall mark each submitted page or sheet with corporate identification and consecutive document control numbers.

6. For each box containing responsive documents the company shall:

a. number each box; and

b. mark each box with the name(s) of the person(s) whose files are contained in that box.

7. If it is claimed that any document, or portion thereof, responsive to any request is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. Any part of a document to which you do not claim privilege or work product should be given without redacting the part not subject to privilege or work product claims. As to any such document, state:

a. the reason for withholding it or other information relating to it;

b. the author and date of the document;

c. each individual to whom the original or a copy of the document was sent;

d. each individual who received the original or a copy of the document;

e. the date of the document or oral communication;

f. the general subject matter of the document;

g. the relevant document request specification(s);

h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names of the parties, case number, and the date of the complaint filing; and

i. any additional information on which you base your claims of privilege.

8. If the company has produced documents responsive to this request in the course of the pre-complaint investigation of this matter, FTC File No. 991-0256, those documents need not be produced again.

9. Unless otherwise stated, each paragraph or subparagraph herein shall be construed independently and without reference to any other paragraph or subparagraph for purpose of limitation.

10. If there are no documents responsive to any particular request, the company shall state so in its answer to the document request.

SPECIFICATIONS

1. One copy of each organization chart and personnel directory for AHP as a whole, for ESI, and for each of the company's facilities or divisions involved in any activity relating to cholesterol reducing products, potassium chloride supplements, or any drug licensed to Schering.

2. Documents sufficient to show the state in which each of AHP's manufacturing facilities is located.

3. For each AHP manufacturing facility, provide annual sales and locations to which the company ships its products.

4. All documents relating to IMS data and reports concerning all potassium chloride supplements, including, but not limited to total prescriptions, new prescriptions, revenue, unit sales and pricing data. Any document maintained in machine readable form must be provided in machine readable form.

5. For each SKU of any potassium chloride supplement manufactured by the company,

provide all documents relating to any measure of the sales, price, revenues, and profit of each SKU, including, but not limited to:

a. gross and net sales to all customers in units and dollars;

b. gross number and dollar value of promotional sample units distributed;

c. sales returns in units and dollars;

d. cost of goods sold in dollars;

e. gross and net profit in dollars;

f. sales, promotion, or marketing expenses;

g. the list price, WAC, AWP, and ATP;

h. product returns in units and dollars; and

i. rebates, credits, allowances, charge-backs, and any other adjustment to price.

6. All documents relating to AHP's plans or forecasts (whether or not implemented) for any potassium chloride supplement, including, but not limited to: business plans; short term and long range strategies and objectives; collaboration plans; budgets and financial projections; research and development plans; manufacturing plans; regulatory plans; or presentations to management committees, executive committees, and board of directors.

7. All documents relating to competition in the manufacture or sale of any potassium chloride supplement, including, but not limited to, market studies, forecasts and surveys, and all other documents relating to:

a. the market share or competitive position of the company or any of its competitors;

b. the relative strength or weakness of companies producing or selling any potassium chloride supplement;

c. any actual or potential effect on the supply, demand, cost or price of any potassium chloride supplement as a result of competition from any other product;

d. any strategy, procedure, effort, or attempt considered or made which had a potential or actual effect on the market introduction of bioequivalent or generic

versions of K-Dur;

e. any analysis, study, projection, forecast, budget or plan of the effect of the introduction of a bioequivalent or generic version of K-Dur on Schering's sales, revenues or profits relating to K-Dur; or

d. potential entrants

8. All documents relating to the company's or any other person's price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, and pricing decisions relating to any potassium chloride supplement.

9. All documents relating to the ESI Patent-Infringement Litigation including, but not limited to:

a. all documents relating to Schering's claims of infringement;

b. all documents relating to the company's defenses and counterclaims to Schering's claims of infringement;

c. all documents relating to the possibility of, or the consequences of, a court decision in favor of Schering or AHP;

d. all documents relating to any settlement proposals or the settlement of the Litigation;

e. all documents relating to AHP's actual or potential legal expenses in the Litigation; and

f. documents sufficient to show how AHP accounted for all payments from Schering.

10. All documents relating to any potential or actual licensing of enalapril and buspirone.

11. Documents sufficient to show annual sales, revenues, research and development expenditures, and net and gross profits for enalapril and buspirone.

12. All documents relating to the development or marketing of enalapril or buspirone, including, but not limited to:

a. marketing or strategic plans;

b. projected or anticipated date of market introduction;

c. plans and budgets for manufacturing;

d. projected or anticipated selling price;

e. product stability testing, product labeling, promotional materials;

f. selection of a base active ingredient supplier;

g. purchase orders for the base active ingredient;

h. all documents relating to the company's abbreviated new drug applications; or

i. all communications with the FDA concerning enalapril and buspirone (including any deficiency letters from FDA concerning manufacturing issues).

13. All documents relating to the evaluation of pharmaceutical products or technology, for in-licensing, co-marketing, co-promotion or similar agreements, that have reached at least the initiation of Phase III trials of the Food and Drug Administration's approval process.

14. All documents relating to abbreviated new drug applications submitted by other persons that are seeking regulatory approval for enalapril and buspirone.

15. All documents relating to the Upsher Patent-Infringement Litigation and the settlement of the Upsher Patent-Infringement Litigation.

16. For the period from January 1,1995 through December 31, 1998, all documents relating to AHP's understanding of the law and the Food and Drug Administration's application of the law, regarding the amendments to the Hatch-Waxman Act, pursuant to 21 USC 355 (j) (LEXIS 2001), including, but not limited to: the company's knowledge and opinions concerning the state of the law.

17. All documents relating to any communications between the company and KV or Upsher and KV relating to any potassium chloride supplement.

18. All documents relating to licensing, co-promotion, collaboration, or transfer of any rights in or assets for any AHP potassium chloride supplement.

19. Documents sufficient to show any departures from the company's policies, procedures,

and practices relating to the retention and destruction of documents that would otherwise be called for by this document request.

20. All documents discussing the rate at which AHP discounts future revenue or profits streams:

    a. for new products in general;

    b. for existing products in general; or

    c. for potassium chloride products specifically.

21. All documents discussing how AHP hedges against exchange rate risk.

22. All documents discussing procedures, criteria, protocols, or methodologies for the evaluation of pharmaceutical products or technology, for in-licensing, co-marketing, co-promotion, or similar agreements, that have reached at least the initiation of Phase III trials of the Food and Drug Administration's approval process.

23. Documents sufficient to show for each and every time the company has been sued for patent infringement:

    a. the company suing ESI;

    b. the alleged infringing product;

    c. the resolution of the litigation; and

    d. any consideration the company received as part of any resultion, including any cash payments.

24. All documents discussing the possibility that a new product could reduce the sales of K-Dur 20 or its generic equivalents.

25. Documents sufficient to show, for each communication between the company and Schering:

    a. the date, time, and location of the communication;

    b. all attendees or participants;

c. the name, title, and division of each AHP and Schering employee, officer, or director involved; or

d. the subject matter of the communication.

26. Documents sufficient to show, for each communication between the company and Upsher:

a. the date, time, and location of the communication;

b. all attendees or participants;

c. the name, title, and division of each AHP and Upsher employee, officer, or director involved; or

d. the subject matter of the communication.

CERTIFICATE OF SERVICE

I, Yaa A. Apori, hereby certify that on May 22, 2001, I caused a copy of the Complaint Counsel's First Request for Production of Documents and Things, to be served upon the following by Federal Express and electronic mail:

Cathy Hoffman, Esq.
Arnold and Porter, LLP
555 Twelfth Street, NW
Washington, D.C. 20004-1206
(202) 942-5123
Attorney for respondent American Home Products Corporation

Yaa A. Apori

EXHIBIT B

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of SCHERING-PLOUGH CORPORATION, a corporation, UPSHER-SMITH LABORATORIES, INC., a corporation, and AMERICAN HOME PRODUCTS CORPORATION, a corporation.	Docket No. 9297

COMPLAINT COUNSEL'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS ISSUED TO AMERICAN HOME PRODUCTS CORPORATION

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.37, complaint counsel hereby requests that respondent American Home Products Corporation (hereinafter "AHP") produce all documents and other things responsive to the following request, within its possession, custody, or control, within twenty days in accordance with the Definitions and Instructions set forth below.

DEFINITIONS

A. The terms "the company" and "AHP" mean American Home Products Corporation, its domestic and foreign parents, predecessors, divisions, and wholly or partially owned subsidiaries, affiliates, partnerships, and joint ventures; and all directors, officers, employees, consultants, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by the company.

B. The term "ESI" means ESI-Lederle, a business unit of Wyeth-Ayerst Pharmaceuticals, Inc., an AHP subsidiary. The term "ESI" includes its predecessors.

C. The term "Schering" means Schering-Plough Corporation, its domestic and foreign

parents, predecessors, divisions and wholly or partially owned affiliates, partnerships, and joint ventures; and all directors, officers, employees, consultants, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by the company.

D. The term "document" means all written, recorded, or graphic materials of every kind, prepared by any person, that are in the possession, custody, or control of the company. It includes all electronically-stored data accessible through computer or other information retrieval systems or devices. The term "document" includes the complete original document (or a copy thereof if the original is not available), all drafts, whether or not they resulted in a final document, and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. Documents covered by this document request include, but are not limited to, the following: letters; memoranda; reports; contracts and other agreements; studies; plans; entries in notebooks, calendars and diaries; minutes, records, and transcripts of conferences, meetings, telephone calls or other communications; published and unpublished speeches or articles; typed and handwritten notes; electronic mail; facsimiles (including the header showing the receipt date and time); tabulations; statements, ledgers, and other records of financial matters or commercial transactions; diagrams, graphs, charts, blueprints, and other drawings; technical plans and specifications; advertising and product labels; photographs, photocopies, slides, microfilm, microfiche, and other copies or reproductions; film, audio and video tapes; tape, disk, and other electronic recordings; and computer printouts.

E. The term "relating to" means, in whole or in part, addressing, analyzing, concerning, constituting, containing, commenting on, discussing, describing, explaining, identifying, referring to, reflecting, reporting on, supporting, stating, or dealing with.

F. The terms "each," "any," and "all" mean "each and every."

G. The terms "and" and "or" have both conjunctive and disjunctive meanings as necessary to bring within the scope of this document request anything that might otherwise be outside its scope.

H. The singular form of a noun or pronoun includes its plural form, and vice versa; and the present tense of any word includes the past tense, and vice versa.

I. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.

J. The term "agreement" means any oral or written contract, arrangement or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.

K. The terms "NDA" and "new drug application" mean an application submitted to the United States Food and Drug Administration seeking regulatory approval to market a new drug, pursuant to 21 CFR 314.50.

L. The terms "ANDA" and "abbreviated new drug application" mean an application submitted to the Food and Drug Administration seeking regulatory approval to market a generic or bioequivalent version of an approved drug, pursuant to 21 CFR 314.94.

M. The terms "discuss" and "discussing" mean in whole or in part constituting, containing, describing, or addressing the designated subject matter, regardless of the length of the treatment or detail of analysis of the subject matter, but not merely referring to the designated subject matter without elaboration. Further, these terms include any operating or financial data about the designated subject matter where data are separately set out as in a chart, listing, table, or graph.

INSTRUCTIONS

1. Except for privileged material, the company will produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Except for privileged material, the company will not mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

2. Unless otherwise indicated, each specification in this document request covers documents dated, generated, received, or in effect on or after **January 1, 1997.** The company should supplement, amend or correct the disclosure and responses to these requests, on a continuing basis, within 20 days after it ascertains that it possesses any additional responsive information. This request shall be deemed continuing in nature.

3. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, the company may submit legible copies. However, if the coloring of any document communicates any substantive information, the company must submit the original document or a like-colored photocopy.

4. Magnetic media shall be submitted in the following forms and formats:

a. Magnetic storage media. The FTC will accept: (1) 9 track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI; (2) 3.5-inch microcomputer floppy diskettes, high-density, double-sided, formatted for IBM compatible computers (1.44 MB capacity); (3) Iomega ZIP disks formatted for IBM compatible PCs (100 or 250 MB capacity); (4) CD-R74 CD-ROM readable disks formatted to ISO 9660 specifications (650 MB capacity); (5) Iomega DITTO mini data cartridges (2000 MB capacity). The FTC will accept 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes by pre-authorization only. In all events, files provided on 4mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs. Where data is to be transferred from a UNIX system the FTC will accept data provided on 8mm DAT created using TAR or DD.

b. File and record structures.

(1). Magnetically-recorded information from centralized non-microcomputer-based systems:

(a) File structures. The FTC will accept sequential files only. All other file structures must be converted into sequential format.

(b) Record structures. The FTC will accept fixed length records only. All data in the record is to be provided as it would appear in printed format: *i.e.,* numbers unpacked, decimal points and signs printed.

(2). Magnetically-recorded information from microcomputers. Microcomputer-based data: word-processing documents should be in DOS-text (ASCII), WordPerfect 8 or earlier version, or Microsoft Word 2000 or earlier version format. Spreadsheets should be in Microsoft Excel 2000 (.xls) or earlier version, or Lotus-compatible (.wk1) format. Database files should be in Microsoft Access 2000 (.mdb) or earlier version, or dBase-compatible (.dbf), version 4 or earlier, format. Database or spreadsheet files also may be submitted after conversion to ASCII delimited, comma separated format, with field names as the first record, or to or fixed length fields accompanied by a record layout.. Graphic images must be in TIFF 4 format, compressed and unencrypted. Other proprietary software formats for word processing documents, spreadsheets, databases, graphics and other data files will be accepted by pre-authorization only. For microcomputer files that are too large for one disk, files may be provided in a compressed ZIP format.

c. Documentation.

(1). Data must be accompanied by the following information:

(a) full path name of the file; and

(b) the identity of the media on which on which it resides, e.g. the identity of the cd, zip disk or floppy that holds the file. In the case of complex files or directories of files, all component files that are part of a given directory must be specified with their full path names. Where necessary, the subdirectories that must be created in order to successfully read these submitted files must be provided.

(2). Files must be accompanied by the following information: (a) filename; (b) the identity of the particular storage media on which the file resides; (c) the position of the file on the media.

(3). For all sequential files, the documentation also must include:

(a) the number of records contained in the file;

(b) the record length and block size ; and

(c) the record layout, including:

i. the name of each element,
ii. the element's size in bytes, and
iii.the element's data type. The documentation should be included in the same package as the storage media, along with a printout of the first 100 records in report format.

d. Shipping. Magnetic media should be carefully packed to avoid damage, and must be shipped clearly marked: **MAGNETIC MEDIA DO NOT X-RAY.**

e. Virus Checks: Media will be scanned for viruses. Infected media will be returned for replacement.

5. The company shall mark each submitted page or sheet with corporate identification and consecutive document control numbers.

6. For each box containing responsive documents the company shall:

   a. number each box; and

   b. mark each box with the name(s) of the person(s) whose files are contained in that box.

14. If it is claimed that any document, or portion thereof, responsive to any request is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. Any part of a document to which you do not claim privilege or work product should be given without redacting the part not subject to privilege or work product claims. As to any such document, state:

   a. the reason for withholding it or other information relating to it;

   b. the author and date of the document;

   c. each individual to whom the original or a copy of the document was sent;

   d. each individual who received the original or a copy of the document;

   e. the date of the document or oral communication;

   f. the general subject matter of the document;

   g. the relevant document request specification(s);

   h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names of the parties, case number, and the date of the complaint filing; and

   i. any additional information on which you base your claims of privilege.

8. If the company has produced documents responsive to this request in the course of the pre-complaint investigation of this matter, FTC File No. 991-0256, those documents need not be produced again.

9. Unless otherwise stated, each paragraph or subparagraph herein shall be construed independently and without reference to any other paragraph or subparagraph for purpose of limitation.

10. If there are no documents responsive to any particular request, the company shall state so in its answer to the document request.

SPECIFICATIONS

SPECIFICATION 1: All Documents discussing AHP's decision to exit the oral generic business.

SPECIFICATION 2: Documents discussing AHP's belief that in order to re-enter the generic market, Wyeth would need to submit and attain approval of a new ANDA on any generic drug product for which ESI-Lederle currently owns an ANDA and does not sell when AHP exits the oral generic business.

SPECIFICATION 3: Documents relating to communications with the FDA regarding AHP's decision to exit the oral generic business, including but not limited to: (1) communications relating to any deficiency at any generic facility, (2) communications relating to ESI's decision to exit the market, (3) communications relating to ESI's decision to withdraw any ANDA.

SPECIFICATION 4: Any documents discussing AHP's analysis of re-entering the generic oral business once it exits that business.

SPECIFICATION 5: Documents related to AHP's plans for the future use of any manufacturing facility at which generic products are currently manufactured.

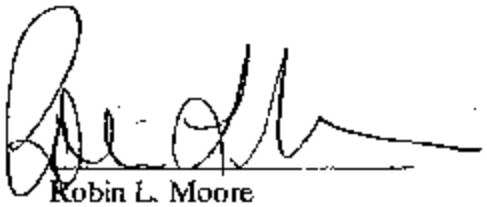
CERTIFICATE OF SERVICE

I, Robin L. Moore, hereby certify that on August 3, 2001, I caused a copy of Complaint Counsel's Second Request for Production of Documents and Things Issued to American Home Products Corporation to be served upon the following persons by Federal Express.

Christopher M. Curran, Esq.
White & Case LLP
601 13th Street, N.W.
Washington, D.C. 20005

Cathy Hoffman, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

Laura S. Shores, Esq.
Howrey Simon Arnold & White
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2402



Robin L. Moore
Complaint Counsel

WASHINGTON, D.C. 20580

Bureau of Competition

August 3, 2001

Via Federal Express and electronic mail

Cathy Hoffman, Esq.
Arnold & Porter
555 Twelfth Street, NW
Washington, D.C. 20004-1206

Re: Federal Trade Commission v. Schering-Plough Corporation, et al.
Docket No. 9297

Dear Ms. Hoffman:

Enclosed is a copy of Complaint Counsel's Second Request for Production of Documents and Things. If you have any questions or concerns, do not hesitate to call me at (202) 326-3133.

Sincerely,

Robin L. Moore
Complaint Counsel

Enclosure

cc: Christopher M. Curran, Esq.
Laura S. Shores, Esq.

EXHIBIT C

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of SCHERING-PLOUGH CORPORATION, a corporation, UPSHER-SMITH LABORATORIES, INC., a corporation, and AMERICAN HOME PRODUCTS CORPORATION, a corporation.	Docket No. 9297

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE, that pursuant to Rule 3.33(c) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, complaint counsel will take the deposition of respondent American Home Products Corporation, as represented by one or more designated officers, directors, or other employees most knowledgeable regarding the matters set forth in Exhibit A to this notice. This deposition will be conducted before some person authorized by law to administer oaths, and will continue from day to day until completed. The testimony will be recorded by stenographic means. The deposition will be taken at the offices of the Federal Trade Commission, 601 Pennsylvania Avenue, N.W., beginning on July 23, 2001 at 9:00 AM.

Respectfully Submitted,

Andrew S. Ginsburg
Complaint Counsel

Dated: July 11, 2001

EXHIBIT A

TOPICS OF INQUIRY

1. Identification of all steps and procedures taken by American Home Products Corporation to locate the documents and information responsive to complaint counsel's First Request for the Production of Documents and Things. This includes, but is not limited to, identification of: (a) the physical locations searched for responsive documents and information, including, but not limited to, the offices, files, desks, and computers, in which responsive documents were contained; (b) the types of documents searched for responsive information, including, but not limited to, all originals and non-identical copies of drafts of all written, printed, recorded, photographic or graphic matter of every kind and description as well as all documents constituting, referring, or relating to electronic mail; and, (c) the instructions given to employees whose files were to be searched for responsive documents and information as well as to persons who actually conducted the search.

2. Description of procedure used to identify which materials were withheld from American Home Products Corporation's response to complaint counsel's First Request for the Production of Documents and Things on the basis of privilege.

3. From January 1, 1995 to present, identification and description of the document destruction and retention policies of American Home Products Corporation.

CERTIFICATE OF SERVICE

I, Andrew S. Ginsburg, hereby certify that on July 11, 2001, I caused a copy of the Notice of Deposition to be served upon the following persons by Federal Express and electronic mail.

Cathy Hoffman, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

Laura S. Shores, Esq.
Howrey Simon Arnold & White
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2402

Christopher M. Curran, Esq.
White & Case LLP
601 13th Street, N.W.
Washington, D.C. 20005

Andrew S. Ginsburg
Complaint Counsel

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition

Andrew S. Ginsburg, Esq.
Direct Dial: 202-326-3108

July 11, 2001

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL.

Cathy Hoffman, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

Re: *In the Matter of Schering-Plough Corp., Upsher-Smith Laboratories, Inc., and American Home Products Corp., Docket No. 9297*

Dear Cathy:

On behalf of Complaint Counsel, I have enclosed a copy of the Notice of Deposition. If you have any questions or concerns, do not hesitate to call me at 202-326-3108.

Sincerely,

Andrew S. Ginsburg, Esq.

Enclosure

cc: Laura S. Shores, Esq.
Christopher M. Curran, Esq.

EXHIBIT D

September 14, 2001

BY ELECTRONIC MAIL & FIRST CLASS MAIL

Karen G. Bokat, Esq.
Bureau of Competition
Federal Trade Commission
601 Pennsylvania Avenue, NW
Washington, D. C. 20580

Re: In the Matter of Schering-Plough Corp., Upsher-Smith Laboratories, and American Home Products, Docket No. 9297

Dear Karen:

I received your letter of September 12th and was very surprised at your characterization of AHP's document production as "long overdue." AHP has been producing documents on a rolling basis to Complaint Counsel since June 27th and to date has produced approximately 37 boxes of documents.

AHP expects that its document production will be substantially complete by September 28. If this expectation changes, I will let you know promptly.

Sincerely,

Anika Sanders Cooper

cc: Laura Shores, Esq.
Christopher Curran, Esq.

EXHIBIT E

ARNOLD & PORTER

Anika Sanders Cooper
Anika_Cooper@aporter.com
202.942.5832
202.942.5999 Fax
555 Twelfth Street, NW
Washington, DC 20004-1206

July 19, 2001

VIA FACSIMILE AND HAND DELIVERY

Yaa Apori, Esq.
Federal Trade Commission
601 Pennsylvania Avenue, NW – Room 3408
Washington, D.C. 20580

Re: In the Matter of Schering-Plough Corp., Upsher-Smith Laboratories and American Home Products

Dear Ms. Apori:

As per our agreement, please find enclosed a preliminary list of individuals whose files AHP intends to search for responsive documents within AHP's possession. The inclusion of a particular name on this list should not be construed to mean that AHP has determined that the person in fact has responsive documents. Also, please note that AHP is still in the process of identifying where responsive documents are likely to be found and reserves the right to alter this list as necessary.

We are looking forward to receiving complaint counsel's search list.

Sincerely,

Anika Cooper

Anika Sanders Cooper

Enclosure

cc: Karen G. Bokat, Esq.
Laura Shores, Esq.
Christopher Curran, Esq.

American Home Products

Submitted July 19, 2001

PRELIMINARY SEARCH LIST

Last Name	First Name	Position	Company
Adams	John	VP, Business Development	American Home Products
Alaburda	Lawrance	Attorney	American Home Products
Alice	Ronald	Attorney	American Home Products
Amonica	Monica	Director, Validation & Tech Transfer	ESI-Lederle
Bansal	Nandkumar	Director, Project Manager	ESI-Lederle
Bartolucci	Ray	Group Leader, Technical Services	ESI-Lederle
Barton	Joan	Coordinator/Manager, Regulatory Affairs (Former)	Wyeth-Ayerst
Beddes	Robert	Asst. VP, Global Financial Reporting	Wyeth-Ayerst
Berg	Egon	Attorney	American Home Products
Berg	Michael	Plant Manager	Wyeth-Ayerst
Beshel	Joseph	Marketing & Sales Inst.	ESI-Lederle
Boardman	Ralph	VP, Supply Chain Management	Wyeth-Ayerst
Bucceri	John	SVP, Global Supply Chain, Operations Div.	Wyeth-Ayerst
Burlington	Bruce	SVP, Reg. Aff/ Compl.	Wyeth-Ayerst
Chiesa	Pierina	Director, Technical Services	ESI-Lederle
Cirino	Joseph	Senior Director, Business Analysis (Former)	Wyeth-Ayerst
Cirone	Frank	VP, Financial, North America	Wyeth-Ayerst
Costella	Robert	VP, Pharma Manufacturing	Wyeth-Ayerst
Dagnello	John	Strategic Marketing Analyst (Former)	ESI-Lederle
Dankulich	Mary Alice	Manager, Regulatory, Marketing & Advertising	Wyeth-Ayerst
Debose	Calvin	Technical Services	Wyeth-Ayerst
Dedhiya	Mahendra	Asst. VP, R&D	ESI-Lederle
DeLuca	Richard	VP, Global Mgmt. & Financial Reporting	Wyeth-Ayerst
DeVito	Joseph	Asst. VP, R&D	ESI-Lederle
Dey	Michael	Women's Health (Former President, Wyeth-Ayerst)	ESI-Lederle
Dougan	Robert	Sr. VP, Comm. Dev.	Wyeth-Ayerst
Essner	Robert	President & CEO	American Home Products
Feinberg	Elliot	Asst. Gen Counsel	American Home Products
Gage	L. Patrick	President, WAR	Wyeth-Ayerst
Grenz	Stacie	Associate Manager, Oral Genetic Products	ESI-Lederle
Grotzinger	Joseph	Director of Marketing, Orals	ESI-Lederle
Haller	Robert	VP, Finance, WAR	Wyeth-Ayerst
Heacock	Jeanette	Director, Global Strat Mktg.	Wyeth-Ayerst
Hoynes	Louis L.	SVP & General Counsel	American Home Products
Kofsky	Kathy	Regulatory Affairs	ESI-Lederle
Kovalic	Kathryn	Director, New Products Marketing	ESI-Lederle
Koziol	Theodore	Senior Director, Global Business Development	Wyeth-Ayerst
Kulkarni	Prakash	Director, Pharmaceutics and Process Development, Research and Development	ESI-Lederle
Lach	Eileen	Attorney	American Home Products
Lee	Mark	VP, WW Licensing	Wyeth-Ayerst

American Home Products
PRELIMINARY SEARCH LIST

Submitted July 19, 2001

Last Name	First Name	Position	Company
Lippmann	Irwin	Director, Pharmaceutical Development (Former)	AH-Robins
Lowrey	James	Senior Director, Business Analysis	Wyeth-Ayerst
McGonigal	Jane	Director, Forecasting	Wyeth-Ayerst
Mandel	Adley	Patent Attorney	American Home Products
Martin	Kenneth	Senior VP, CFO	American Home Products
Mitrione	Diane	Director, Marketed Products, Regulatory, Marketing & Advertising	Wyeth-Ayerst
Mueller	Hans	SVP, Global Bus Dev.	Wyeth-Ayerst
Norden	Gregory	Exec. VP, W-A Pharma, Finance and Administration	Wyeth-Ayerst
O'Connor	Jack	Treasury, Risk Management Hedging	American Home Products
O'Dea	Linda	Associate Director, Regulatory Affairs	ESI-Lederle
Peritore	Salvatore	Associate Director, Regulatory Affairs	ESI-Lederle
Poindexter	Lee	Associate Director, Technical Services (Former)	AH-Robins
Popli	Shankar	Scientist (Former)	AH-Robins
Poussot	Bernard	President, Wyeth Pharma	Wyeth-Ayerst
Rahman	Shafiqur	Sr. Director, Mktg.	ESI-Lederle
Ripple	John	Asst. VP, Global Bus. Dev., Corp. Dev.	Wyeth-Ayerst
Rosenstack	Joel	Director, Marketing Injectables	ESI-Lederle
Ruffolo	Robert	EVP, W-A R&D/ Pharma R&D	Wyeth-Ayerst
Schneider	Bruce	Sr. VP, W-A Research / Research Operation Plan	Wyeth-Ayerst
Sebree	Mark	Asst. VP, Marketing	ESI-Lederle
Senner	Christpher	Portfolio Products Senior Manager, Pricing, Forecasting, Contracting	Wyeth-Ayerst
Shaughnessy	John	Asst. VP, Retail Marketing & Sales	ESI-Lederle
Sherman	Jeffrey	Asst. Gen Counsel	American Home Products
Siber	George	SVP & Chief Science Officer, R&D	ESI-Lederle
Stafford	John	Chairman	American Home Products
Tantillo	Nicholas	FDA/Regulatory	ESI-Lederle
Tarnowski	George	Chief Patent Counsel	American Home Products
Thrash	Eric	Executive Director, Contract Development and Administration, Pricing, Forecasting, Contracting	Wyeth-Ayerst
Tiedemann	Ray	Asst. VP, Pricing, Forecasting, Contracting	Wyeth-Ayerst
Updike	James	Sr. Manager, Business Development	Wyeth-Ayerst
Valverde	Edward	Director, Sourcing	Wyeth-Ayerst
Wagner	Leanne	Asst. VP, Strat. Development	American Home Products
Warner	Ronald	President, ESI	ESI-Lederle
Weaver	Karen	Dir., Proj. Mgr.	ESI-Lederle
Wezel	Warren	Executive Director, Analytical Development	ESI-Lederle
White	Marilena	Treasury, Risk Management Hedging	American Home Products

American Home Products
PRELIMINARY SEARCH LIST

Submitted July 19, 2001

Last Name	First Name	Position	Company
Wierz	David	Sr. Director, Mktg. Econ/Pricing	Wyeth-Ayerst
Wiser	Robert	Attorney	American Home Products

FACSIMILE TRANSMISSION SHEET

ARNOLD & PORTER

Thurman Arnold Building
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

Telephone Number.....(202) 942-5000
Telex Number.....89273 ARFOPO WSH
Facsimile Number .....(202) 942-5999

If you experience difficulty receiving this fax transmission please contact the operator at (202) 942-5837

Date: July 19, 2001

RECIPIENT	RECIPIENT FAX#	RECIPIENT TELEPHONE #	RECIPIENT ROOM #
Karen G. Bokat, Esq.	202-326-3384	202-326-2912	
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